EXHIBIT C

ELWHA RIVER ECOSYSTEM AND FISHERIES RESTORATION

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON ENERGY AND COMMERCE

AND THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES

AND THE

SUBCOMMITTEE ON WATER, POWER, AND OFFSHORE ENERGY RESOURCES

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

H.R. 4844

A BILL TO RESTORE OLYMPIC NATIONAL PARK AND THE ELWHA RIVER ECOSYSTEM AND FISHERIES IN THE STATE OF WASHINGTON

JULY 9, 1992

Committee on Energy and Commerce
Serial No. 102-147

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Serial No. 102-86

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STATEMENT OF KEITH O. FULTZ

Mr. FULTZ. Thank you, Mr. Chairman. I would like to have my entire statement made part of the record. I will try to summarize as briefly as I can.

Although GAO has not performed an indepth analysis of the impact of the proposed legislation, we have issued five products over the past 3 years to Chairman Dingell that address several issues relating to these bills. Our products have addressed three primary issues: FERC's authority to license Elwha and Glines Canyon dams; Interior's position on whether these dams should be removed to restore fisheries in the river; and if the dams are to be removed, Interior's position on who should pay the costs associated with their removal.

In summary, our work has shown the following: Both Interior and Commerce agree with our opinion that FERC does not have the authority to relicense Glines Canyon Dam. The dam is within the boundaries of the park and FERC does not have authority to license dams in national parks. FERC, however, does disagree with our opinion and the issue is now before the U.S. 9th Circuit Court of Appeals.

While Interior and Commerce disagree with FERC on FERC's authority to relicense the Glines Canyon Dam, the three agencies do agree that removing both dams offers the best prospects for restoring the river fisheries and the ecosystem that includes the Olympic National Park.

Interior has stated, however—and we heard it again here this afternoon—that the Federal Government should not be required to assume all the potential liabilities and costs of restoration. Instead, they believe that the liabilities and costs should be allocated among the various parties in proportion to the benefits that they have received or will receive from restoration of the river.

I would now like to briefly discuss how the two bills propose to address these three issues.

In our opinion, the legislation would resolve the legal dispute over FERC's authority to relicense the Glines Canyon Dam. The bills would allow ownership of both dams to be transferred to the Secretary of the Interior. FERC does not have authority to license Federal dams, and therefore it would make the litigation moot, in our opinion.

While not requiring that the two dams be removed, the bills would direct the Secretary to convene a task force comprised of Federal, State and local entities to prepare an analysis of the most effective and reliable alternatives for fully restoring, enhancing and protecting the ecosystem, fisheries and wildlife of the Elwha River Basin. The task force is to recommend a plan and the Secretary approve and then implement that plan, which may include removal of the dams.

The proposed legislation also may require that the Federal Government assume all the liabilities and costs of restoration. I think while the prospects of restoring the fisheries are encouraging, Interior and others believe that the costs of the proposed legislation could be substantial. For example, FERC estimates that it will cost

between $61 and $125 million to remove the dams and another $5 million over the a 10-year period to restore the fisheries.

In addition, BPA estimates that it will cost about $29 million to subsidize the replacement power, as Mr. Robertson has just discussed.

Interior also has raised concern that the legislation would require the Federal Government to assume all liability for any claims that Indian tribes may have against the former and current owners of the dams for impact on their rights reserved by treaties, particularly as they relate to the fishery resource. To my knowledge, those amounts have not been quantified, but it is an issue that I think needs to be addressed.

In summary, Mr. Chairman, whether and how to restore the Elwha River ecosystem and fisheries is ultimately a policy decision that needs to be made in which value judgments must be made about costs, benefits and tradeoffs. While we have not verified the estimated costs and potential liabilities that I have discussed, we believe that a better understanding of their magnitude is needed for a more informed public policy decision on whether and how best to restore the ecosystem and fisheries of the Elwha River and then ultimately who should be responsible for paying for those costs.

That concludes my summary. I will be glad to respond to any questions that you or other members might have.

[Testimony resumes on p. 75.]

[The prepared statement of Mr. Fultz, and attached GAO report, follow:]

59-605 - 92 - 3

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Energy and Power, Committee on Energy and Commerce; the Subcommittee on Water, Power and Offshore Energy Resources, Committee on Interior and Insular Affairs; and the Subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, House of Representatives

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HYDROELECTRIC DAMS

Proposed Legislation to Restore Elwha River Ecosystem and Fisheries

Statement of Keith O. Fultz,
Director of Planning and Reporting,
Resources, Community, and Economic
Development Division

GAO/T-RCED-92-80

GAO Form 160 (12/91)
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Messrs. Chairmen and Members of the Subcommittees, I am pleased to be here today to discuss H.R. 4844, the Elwha River Ecosystem and Fisheries Restoration Act, and its companion bill, S. 2527. Although we have not performed an in-depth analysis of the impacts of the proposed legislation, we have issued five products over the past 3 years to the Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, that address several issues relating to the bills.* Our most recent report is being released by the Chairman today. Our products have discussed (1) the Federal Energy Regulatory Commission's (FERC) authority to license the Elwha and Glines Canyon Dams on the Elwha River in the state of Washington, (2) the Department of the Interior's position on whether these hydroelectric dams should be removed to restore fisheries in the river, and (3) if the dams are removed, Interior's position on who should pay the costs associated with their removal.

In summary, we have found that Interior and the Department of Commerce's National Marine Fisheries Service (NMFS) agree with our opinion that FERC does not have authority to relicense the Glines Canyon Dam. The dam is within the boundaries of the Olympic National Park and FERC does not have authority to license dams in national parks. FERC disagrees and the issue is now before the U.S. 9th Circuit Court of Appeals. Interior, NMFS, and FERC do agree that removing both the dams offers the best prospects for restoring the Elwha River fisheries and ecosystem that includes the Olympic National Park. Interior has stated, however, that the federal government should not be required to assume all the potential liabilities and costs of restoration. Instead, Interior believes that the liabilities and costs should be allocated among the various parties in proportion to the benefits they have received from the dams or will receive from the restoration of the river.

In our opinion, the proposed legislation would resolve the legal dispute over FERC's authority to relicense Glines Canyon Dam. The bills would allow ownership of both dams to be transferred to the Secretary of the Interior, and FERC does not have authority to license federal dams.

The bills may not, however, resolve other issues. For example, they would not require that the two dams be removed. Instead, they would require that a task force be convened to prepare a plan to fully restore, enhance, and protect the ecosystem, fisheries, and wildlife of the Elwha River basin, while preserving the quality and continued availability of Elwha River water to its users. The task force is to recommend and the Secretary of the Interior is to approve and implement a plan that may include removal of the dams.

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*See ''Hydroelectric Dams: Interior Favors Removing Elwha River Dams, but Who Should Pay Is Undecided'' (GAO/RCED-92-160, June 5, 1992) and ''Hydroelectric Dams: Costs and Alternatives for Restoring Fisheries in the Elwha River'' (GAO/RCED-91-104, Mar. 27, 1991). Also see our legal opinions of February 16, 1990 (B236481); August 16, 1990 (B-236481.2); and June 5, 1991 (B-236481.4).

The proposed legislation may also require the federal government to assume all the liabilities and costs of restoration. According to Interior and others, the costs of the proposed legislation could be substantial and could include the costs to remove the dams, restore the fisheries, subsidize the replacement power, and build and operate new water treatment facilities. In addition, Interior has raised concern that the legislation may require the federal government to assume all liability for any claims that Indian tribes may have had against the former and current owners of the dams for the dams' impact on their rights reserved by treaties, particularly as they relate to the fishery resource.

BACKGROUND

The Elwha River flows for about 45 miles from its source in the Olympic Mountains of Washington State through the Olympic National Park to the Strait of San Juan de Fuca. Two dams are located along the river: the Glines Canyon Dam, located about 13 miles from the river's mouth and wholly within the Olympic National Park, and the Elwha Dam, located about 8 miles downstream from the Glines Canyon Dam and outside the park. The Elwha Dam was built in 1911 and rebuilt in 1913, and the Glines Canyon Dam was built in 1927. The sole purpose of these dams is to provide about 40 percent of the electricity used by a local pulp and paper mill in Port Angeles, Washington. The remaining electricity used by the mill is provided by the Bonneville Power Administration (BPA) through a local utility.

The Glines Canyon Dam was originally licensed to provide hydroelectric power for a period of 50 years. Since the original license expired in 1976, FERC has renewed the license annually. The Elwha Dam has never been licensed.

The Elwha River historically supported large populations of wild anadromous fish, including four species of Pacific salmon and three species of trout. Since construction of the Elwha Dam, these native fish have been unable to migrate upstream to spawn and have been eliminated from the river above the dam. As a result, various wildlife that depend upon anadromous fish for food have had to relocate. This situation has adversely affected the Elwha River ecosystem, especially that which is within the Olympic National Park. According to Interior, the two dams also have affected the federal government's treaty obligations to Indian tribes and the federal trust responsibility to protect Indian rights and resources, particularly as they relate to the fishery resource and associated Indian fishing rights in the Elwha River basin.

THE PROPOSED LEGISLATION WOULD RESOLVE THE DISPUTE OVER FERC's AUTHORITY TO RELICENSE GLINES CANYON DAM

Under the Federal Power Act, FERC does not have authority to license dams

in national parks. When the Glines Canyon Dam was first licensed, it was in the Olympic National Forest. In 1940, the boundaries of the Olympic National Park were extended to include the dam. In our opinion, FERC does not have authority to relicense the project because the dam is now within the park. Interior and NMFS agree with our opinion; however, FERC disagrees. FERC's authority to relicense Glines Canyon Dam has been challenged in the U.S. 9th Circuit Court of Appeals by a number of parties, including NMFS.

As stated in our June 1992 report, the proposed legislation would resolve the legal dispute over FERC's authority to relicense Glines Canyon Dam. Under the proposed legislation, the current owner of the two dams would be allowed to transfer ownership of the dams to the Secretary of the Interior. FERC does not have authority to license federal dams.

SUPPORT FOR REMOVING THE DAMS

In our June 1992 report, we stated that, according to Interior officials, a successful project to remove the dams would require unified administration positions on removing them and on who should pay the removal costs. Interior had not, as of May 1, 1992, (the period covered by our most recent report) resolved these questions with FERC and the Office of Management and Budget. However, in a June 12, 1991, letter to FERC, Interior stated that the dams need to be removed from the Elwha River to (1) ensure restoration of all species of anadromous fish to their former habitat within the Elwha River basin, (2) ensure restoration of the basin's ecosystem, including the Olympic National Park, and (3) facilitate access of resident Indian tribes to their usual and accustomed fishing places, as required under U.S. treaty obligations with the tribes. In his June 4, 1992, statement on the proposed legislation before the Senate Committee on Energy and Natural Resources, Interior's Assistant Secretary for Fish and Wildlife and Parks reasserted this position, stating that Interior presently believes that removal of the two dams is the best way to achieve the goal of restoring the Elwha River.

At the June 4, 1992, Senate hearing, a NMFS official testified that NMFS has publicly stated that only the removal of both dams will achieve the goal of restoring anadromous fish stocks that historically inhabited the largely pristine habitat above Elwha Dam. At this hearing, the Deputy Administrator of BPA, while not endorsing the removal of the dams, stated that BPA supports the concept of restoring the Elwha River ecosystem and fisheries.

Although FERC's February 1991 draft environmental impact statement, prepared in response to applications by the owner of the dams to license them, did not present a preferred alternative, FERC staff informed us that dam removal would provide the best potential for restoring wild, self-sustaining runs of anadromous fish as well as natural environmental conditions within the Olympic National Park. FERC stated, however, that such restoration is mutually exclusive of an objective of providing

renewable hydroelectric energy.

While not requiring that the two dams be removed, the proposed legislation would direct the Secretary of the Interior to convene a task force, comprised of federal, state, and local entities. This task force would be charged with preparing a comprehensive and multidisciplinary analysis of the most effective and reliable alternatives for fully restoring, enhancing, and protecting the ecosystem, fisheries, and wildlife of the Elwha River basin, while preserving the quality and continued availability of Elwha River water to its users. The task force would prepare a plan based on its findings and make recommendations to the Secretary of the Interior. Upon approval of the plan, the Secretary would be authorized and directed to implement the plan, including authority to remove the dams.

THE POTENTIAL LIABILITIES AND COSTS OF THE PROPOSED LEGISLATION ARE UNCERTAIN

According to Interior, the proposed legislation may require the federal government to assume the liabilities and costs of restoration, the magnitude of which is currently unknown. Proponents of the legislation have estimated the cost of the legislation at between $30 and $100 million, depending on the eventual restoration alternative selected. They also have noted that this estimate compares favorably with the federal investments in salmon restoration in other Pacific Northwest river basins. The estimate, however, does not include certain costs and potential liabilities.

In its draft environmental impact statement, FERC estimated the cost of removing both dams at about $61 million. The cost could increase to about $124.6 million if the large amount of sediment that has accumulated in the reservoirs behind the dams has to be hauled to a disposal site several miles away, rather than stabilized in place. In addition, FERC estimated that new fish hatchery facilities needed to restore fisheries upriver from the dams would cost $3.1 million to construct and $2 million over 10 years to operate.

In addition to the costs associated with removing the dams and restoring the fisheries, Interior, in its June 4, 1992, statement before the Senate, noted that under the proposed legislation (1) the federal government would assume a yet to be determined liability for any claims the Indian tribes may have had against the former and current owners of the dams during the 65 to 80 years that the projects have been in operation and (2) replacement power would be provided the owner of the mill at a statutorily controlled rate that is less than the priority firm rate BPA charges its preferred customers, with the difference (estimated by BPA to have a net present value of $29 million in 1992 dollars) passed on to the U.S. Treasury in the form of forgiveness of BPA debt. Similarly, the mayor of Port Angeles, Washington, stated that the treatment facilities required to maintain the high quality water provided by the Elwha River after the dams are removed would cost $30 million to build and $2.5 million a year to

operate. Under the proposed legislation, these costs are to be borne by the Secretary of the Interior.

Interior has stated that the federal government should not be required to assume all the liabilities and open-ended costs of restoration. Instead, Interior believes that the liabilities and costs of restoration should be allocated among the various parties in proportion to the benefits they have received from the dams or will receive from the restoration of the river. BPA is opposed to charging the owner of the mill a rate that is more favorable than the rates provided other customers. BPA also believes that forgiveness of BPA's debt to the U.S. Treasury would result in an inappropriate use of taxpayer receipts.

In summary, Mr. Chairman, whether and how to restore the Elwha River ecosystem and fisheries are essentially public policy decisions in which value judgments must be made about costs, benefits, and trade-offs. While we have not verified the estimated costs and potential liabilities addressed above, we believe that a better understanding of their magnitude would provide a better basis for more informed public policy decisions on whether and how best to restore the ecosystem and fisheries of the Elwha River and who should be responsible for paying the costs of restoration.

Messrs. Chairmen, this concludes my statement. I will be happy to respond to any questions that you or other Members of the Subcommittees may have.

look forward to working with you as we move ahead with the legislation.

Our last panel includes Mr. Shawn Cantrell of Friends of the Earth; the Honorable James D. Hallett, who is mayor of Port Angeles; Ms. Carla Elofson, who is the tribal chairwoman of the Lower Elwha S'Klallam Tribe; Mr. David McCraney, who is assistant to the director of the Washington State Department of Trade and Economic Development; Mr. Steve Taniguchi, executive vice president of Daishowa America; Mr. Robert J. Morgan, who is vice president/resident manager of James River Corp.-Wauna Mill; and Mr. Marty Kanner, Kanner & Associates.

We welcome you all. Your prepared text will be made part of the record. You may proceed as you wish. We will recognize you in the order announced and begin with Shawn Cantrell.

STATEMENTS OF SHAWN CANTRELL, ON BEHALF OF FRIENDS OF THE EARTH; JAMES D. HALLETT, MAYOR, PORT ANGELES, WA; CARLA J. ELOFSON, CHAIRWOMAN, LOWER ELWHA S'KLALLAM TRIBE; DAVID L. McCRANEY, ASSISTANT TO THE DIRECTOR, WASHINGTON STATE DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT; STEVE TANIGUCHI, EXECUTIVE VICE PRESIDENT, DAISHOWA AMERICA, ACCOMPANIED BY W. MICHAEL HAFFERTY, COUNSEL; ROBERT J. MORGAN, VICE PRESIDENT/RESIDENT MANAGER, JAMES RIVER CORP.-WAUNA MILL; AND MARTY KANNER, ON BEHALF OF THE PUBLIC POWER COUNCIL

Mr. CANTRELL. Thank you, Mr. Swift. I would ask that the committee have an opportunity to have my full written statement in the record.

At this point I would just summarize a couple key points and would also like the opportunity to respond to a few of the comments and questions that had been raised earlier.

I would start off by saying that beyond Friends of the Earth I represent a number of conservation groups that have intervened in the FERC licensing proceedings for these two dams. We fully support the intent and purposes of this legislation. We commend yourself as well as the full committees that are considering this and are very thankful for your leadership in bringing all three committees together today at this hearing to discuss this issue.

Specifically, I would want to comment on a few facts. I think your comment is probably the most articulate one that needs to be kept in mind as the committees deliberate this issue, which is, what do the fish need, what is best for the fish?

I think the intent and purposes of this bill is very clear that this legislation is intended to do just that, to help the fish, to restore the fisheries and the ecosystem of the Elwha River. This is something that the conservation groups have been advocating for a number of years when it was not quite so popular with some of the agencies and some of the other organizations and groups and interests that are represented by the witnesses today. We have maintained all along that dam removal and restoration of the Elwha is what is really needed in order to help the fish.

For those who have questions about whether or not we should do this now or whether we should do another study and examine this

issue a little bit more closely, I would point out that over 7 years of studies have already been done on this issue. As has been pointed out by yourself and others, the overwhelming conclusion of all agencies, all entities that have done this, Federal agencies, the tribe, private interests, is that dam removal is the preferred option if you in fact want to restore the fish. I think that needs to be clear.

Also questions have been raised, not so much today but in the past, as to is dam removal actually feasible: can you do that? Is it engineeringly, constructionwise—destructionwise, I guess, would be a better term—feasible to do that? The answer again is overwhelmingly yes.

I would refer to specific testimony that was given on the Senate side when they held a hearing on this by the engineering firm that has been contracted by the tribe. I am not an engineer and so I won't try to go into the details, but I would make these committees aware of that testimony on the Senate side if there are questions about the feasibility of dam removal.

Then that comes to the question of whether or not is it good policy. Does it make sense for the national Government to enact this legislation and to move forward with restoring the fish? I would say that there is in fact a very compelling national interest in restoring the Elwha. There is a unique set of circumstances that are present here on the Elwha that are not present in any other situation that I can think of that in fact make this a compelling national interest in passing this legislation.

First of all, the ongoing existing Federal commitment to restoration of anadromous fish in the Northwest. The U.S. Government is already spending millions of dollars each year, has spent millions, and is projecting to spend millions more to restore anadromous fish runs throughout the Northwest. We applaud and support those efforts.

But if you look at the opportunity that the Elwha presents on restoration of anadromous fish compared to some of the other efforts in the Northwest, there is no comparison. The likelihood of success of restoring the Elwha, according to the biologists, is overwhelming. We can do it. It's a simple matter of removing the dams and the fish will in fact return to the river.

The second key point that makes it a compelling national interest is the presence of a national park. That subject has been discussed quite a bit, so I won't go into that.

Third, the existence of tribal treaty rights in the national trust, the trust responsibility that the national Government has. I'm sure the tribe can address that more articulately than I, but I would point that out.

Fourth is that it has not yet been mentioned there is already ongoing expensive expenditures by the U.S. Government, $3.3 million to date on one aspect alone, which is erosion control on Ediz Hook. Ediz Hook, as you are well aware, Mr. Chairman, is the natural spit that forms the harbor of Port Angeles. The Army Corps of Engineers has spent over $3 million maintaining that spit because of the dams on the river that block the natural flow of rocks and sediment down and normally renourish that spit. Because of the dams, the Federal Government is spending millions of dollars and will

have to continue to spend that money if the dam situation is not resolved.

So for all of those factors, I think there is no question in our mind that there is a compelling Federal interest in resolving this situation. While we have some concerns with this legislation, we want to work with the committees to refine a few items, including what Mr. Vento pointed out as far as making dam removal a stronger option or alternative in the legislation. We support the intent and purpose of this bill and we want to move forward as quickly as possible. In simple terms, the fish can't wait. Each day, each year, each migration season that passes make the restoration possibilities dwindle.

I want to just touch on two or three other questions that were raised. First, regarding the cost of dam removal and the figure of $61 to $125 million. There was the impression that that was just dam removal. I would point out that if you accept the FERC numbers of $61 to $125 million, that is not just dam removal but also fish restoration costs are included in that.

Also Mr. Taylor asked a question about what the economic benefit would be for dam removal. Again, I am not an economist, but I would point out that there has been a reconnaissance study commissioned by the tribe that has found that there would be a net economic benefit for the Port Angeles and North Olympic Peninsula area of $150 million over a 50-year time. The tribe may be able to provide that study and other additional information. But there are obvious economic benefits.

Beyond the obvious tangible ones, there is the question of how do you put a value on a species and should it go extinct. The conservation groups are not prone to try to put dollar figures on natural resource values. The reason that we have intervened and that we are continuing to work on this issue is that we think there is inherent value in the ecosystem that you cannot put a dollar value on beyond what the tribal study was able to identify.

The last point that I would note was the questions regarding endangered species petitions and the likelihood of increased cost in the future. I would just again point to testimony that was given on the Senate side when they held a hearing on this issue. The representative for the National Marine Fisheries Service, which would be responsible for any ESA listings or petitions on this matter, testified before the Senate that an ESA listing is very possible in the near term.

ESA doesn't require a petition from an outside group. NMFS has the authority to make that listing on their own is my understanding. I'm not an engineer and not an economist and also I am not an attorney, so I would defer to the attorneys on that question, but that is my understanding.

With that, I would end and offer to answer whatever questions the committee may have.

Mr. SWIFT. Thank you very, very much.

Mayor Hallett.

[Testimony resumes on p. 97.]

[The prepared statement and attachments of Mr. Cantrell follow:]

FRIENDS OF THE EARTH
Northwest Office

TESTIMONY OF SHAWN CANTRELL
ASSISTANT NORTHWEST REPRESENTATIVE
FRIENDS OF THE EARTH
ON
H.R. 4844 "*ELWHA RIVER ECOSYSTEM AND FISHERIES RESTORATION ACT*"
JULY 9, 1992

My name is Shawn S. Cantrell. I am Assistant Northwest Representative for Friends of the Earth, based in our regional office in Seattle, Washington. I appreciate, the opportunity to testify today on H.R. 4844, the "*Elwha River Ecosystem and Fisheries Restoration Act.*"

Today, in addition to Friends of the Earth, I am representing the position of the 15 conservation organizations which have intervened in the Federal Energy Regulatory Commission's (FERC) licensing proceedings for the Elwha and Glines Canyon hydroelectric projects located on the Elwha River. *(see attachment 1 for a listing of these organizations.)*

Mr. Chairman, the conservation community supports the intent and purposes of this legislation. It is our intent to work with you and these committees to pass a strong Elwha River Restoration bill this year.

ORGANIZATIONAL INVOLVEMENT WITH THE ELWHA ISSUE

Conservation groups in Washington state have a long history of involvement with the Elwha River. One of the very first outings conducted by the Mountaineers was an expedition up the Elwha in 1907. In the years that have followed that early trip, the Elwha River and its magnificent valley has remained a very popular destination for the members of our organizations. Hiking, camping, boating, fishing, picnicking, and wildlife viewing along the Elwha continue to be important activities for our members, as well as for other visitors from around the world.

Our members were also instrumental in the establishment of Olympic National Park, which encompasses most of the Elwha basin. The management of and conditions within Olympic National Park remain priority issues for our organizations. We continue to participate in a full range of citizen forums, committees, and advisory groups regarding the park.

Our direct involvement with the issues surrounding the two hydroelectric projects on the Elwha River formally began in 1986, when four of our organizations intervened in the FERC licensing proceeding. In 1990 and 1991, an additional eleven conservation groups were granted intervenor status by FERC. In May, 1991, we filed an appeal in the U.S. Ninth Circuit Court of Appeals against FERC, challenging FERC's legal jurisdiction to issue a new operating license for the Glines Canyon dam.

4512 University Way NE
Seattle, WA 981*05
206 633-*6*
206 633-*035 FAX

OVERVIEW OF THE ELWHA RIVER ECOSYSTEM

Eighty years ago, the Elwha River was synonymous with salmon. Flowing steeply down from the heart of Washington state's Olympic mountains, the Elwha River offered ideal conditions for anadromous (ocean-migrating) fish -- clean and cold water, extensive beds of gravel in which fish can build their nests called redds, and no insurmountable obstacles to upstream passage.

Prior to 1911, the Elwha was one of only a few rivers in the entire Pacific Northwest to support all five species of Pacific salmon (chinook, coho, sockeye, pink and chum), along with three species of anadromous trout (steelhead, cutthroat, and Dolly Varden). Each species utilized a different area of the watershed and entered the river at a different time during the year. The result was one of the finest anadromous fisheries resources in the nation. When the adult pink salmon returned to the river to spawn, they would number over 250,000. And among the region's Native American people, Elwha chinook salmon held legendary status, often exceeding 100 pounds in size.

These fish were central to the ecology of the Elwha watershed. So many varieties and numbers of anadromous fish meant a robust and reliable food chain. The National Park Service has identified 22 species of birds and animals, including cougars, black bears and bald eagles, which fed on the salmon. The spawned out carcasses also returned rich nutrients to the soil, providing tons of natural fertilizer for the vegetation along the river banks. This process extended a surprising distance from the river and its tributaries, as animals dragged carcasses from the stream for good distances into the brush to be devoured.

The Elwha River forms the largest watershed within Olympic National Park. Established by Congress in 1938, the purpose of the park is to preserve and protect the "... *primeval forests... [and] the native Roosevelt elk and other wildlife indigenous to the area.*" One of the great treasures of the American people, Olympic National Park is a unique combination of ocean shores, temperate rain forests, mighty rivers, alpine meadows, rugged mountains and glaciers. Over 95 percent of the park is in designated wilderness, including the majority of the Elwha watershed. In recognition of these facts, the park has been designated an International Biosphere Reserve and a World Heritage Site by the United Nations.

THE PROBLEM

Unfortunately, the complex and diverse ecosystem of the Elwha was tragically altered by the construction of two hydroelectric dams on the river. Between 1911 and 1914, the 105-foot high Elwha dam was constructed five miles from the mouth of the river. In 1926, the 210-foot high Glines Canyon dam was erected at river mile 12 of the Elwha. Built without ***any*** fish passage facilities such as fish ladders, these two dams have completely blocked access to the middle and upper reaches of the Elwha River for all anadromous fish runs.

Together, these dams decimated the fable salmon runs of the Elwha. Sockeye salmon in the Elwha are now extinct. Pink salmon, once numbering over 250,000 returning spawners, have been reduced to less than 100 adults. And the runs of chinook, coho, chum, steelhead, cutthroat and Dolly Varden are similarly depressed. What was once one of the finest salmon rivers in the country is now at serious risk of seeing all of its anadromous fish stocks driven to extinction.

The loss of salmon access to spawning areas above the dams has had a corresponding, detrimental impact on the animal and plant species in the Elwha basin. Without the salmon to feed on, numerous species must forage elsewhere for food. And the vegetation in the Elwha watershed above the dams has suffered from the loss of the rich nutrients once supplied by decaying salmon carcasses.

In addition to blocking fish passage upstream to pristine river habitat, the dams have also prevented the downstream movement of gravels and other bedload materials to the lower river, the delta, and ocean shoreline. This has resulted in the few remaining miles of river accessible to salmon being robbed of vital gravels needed for successful spawning. The natural clam beds at the mouth of the river have also been decimated by the lack of replenishing materials from upriver.

And perhaps the most costly impact of the dams to date for the U.S. taxpayers is the loss of natural gravel recruitment to Ediz Hook. A natural gravel spit which extends into the Strait of Juan de Fuca to form the harbor of Port Angeles, Ediz Hook was formed in large part by rock and other materials naturally flushed down the Elwha River. Now, due to the blockage of these materials by the two dams, every year the spit is denied more than 13,000 cubic yards of material normally supplied by the Elwha River. The U.S. Army Corps of Engineers has spent over 3.3 million dollars of federal money since 1976 in an attempt to halt and correct the erosion of Ediz Hook. This effort has required over 400,000 tons of armor rock, gravel and cobbles to renourish Ediz Hook. Furthermore, the Corps estimates additional erosion control measures will be required every five to eight years at an approximate cost to U.S. taxpayers of $800,000 each time.

It is also important to note that the Glines Canyon project lies wholly within Olympic National Park. The presence of a hydroelectric dam within the park is clearly incompatible with the purposes and goals of the park. Thus we maintain that when the 50-year operating license for the Glines Canyon project expired in 1976, the dam became an illegal intrusion on Olympic National Park. As I noted earlier, the conservation organization intervenors have filed an appeal in federal court challenging FERC's legal jurisdiction to issue a new operating license for the Glines Canyon dam. In two legal opinions released in 1990, the General Accounting Office (GAO) agreed with our position, stating that the dam cannot receive a new license due to its intrusion on the park.

In addition, the two dams have had disturbing impacts on the Lower Elwha Klallam Tribe. In 1855, when the Tribe signed the Treaty of Point No Point with the U.S. government, they retained the right to fish the river in perpetuity. Yet by blocking fish passage to most of the river, the dams have effectively negated the Tribe's treaty rights to fish there.

THE CASE FOR RESTORATION

Today, despite the devastating impacts these dams have had on the Elwha River fisheries and ecosystem, there is good news. After seven years of study, federal resource agency biologists concluded in March, 1990 that **all** of the Elwha anadromous fish runs can be restored to the river. They determined that the prospect for restoring native runs are "good" for all species except sockeye and spring chinook, which are rated as at least "fair." *(see attachment 2)*

Corresponding analyses and reports by the Tribe and by GAO, and even FERC's own draft Environmental Impact Statement for the projects, have reached the same basic conclusion: *restoring Elwha River salmon is feasible.*

Restoring the Elwha River ecosystem is of compelling regional and national significance. Salmon in the Northwest are the subject of great social, cultural, and economic impact. Students in grade school learn with pride the story of the magnificent journey of salmon, from natal stream to the ocean and then back home again. Recreational and commercial fishing have been central to the Northwest way of life since the arrival of the first white settlers. Entire Native American cultures revolve around salmon. And the economic benefit salmon harvests have provided to the Northwest is in the billions of dollars. A recent study by the Oregon Rivers Council found Northwest fisheries provide 60,000 direct jobs and contribute one billion dollars annually in personal income to the regional economy.

In light of the importance of Northwest anadromous fish and the "at-risk" status of many of these runs, Congress has established numerous programs to assist with fisheries restoration and enhancement efforts throughout the region. The federal government has recognized the importance of these salmon runs to the nation and is currently spending millions of dollars each year in the Northwest to reverse the declines in salmon and steelhead populations.

The opportunity to restore the bountiful salmon runs to the Elwha is in keeping with this recognized national priority of protecting and enhancing Northwest anadromous fisheries. Furthermore, the Elwha River represents the single best opportunity to restore wild salmon anywhere in the entire Northwest. This is due to the combination of pristine habitat protected within the park and the ability to remove the only obstacles to access that habitat. The scientific evidence is overwhelming: the Elwha River salmon runs can be successfully restored.

There is also a compelling national interest in restoring the ecosystem of Olympic National Park. This is an historic opportunity to restore an internationally recognized ecosystem damaged by past exploitation. This would be of benefit to the countless fish, wildlife and plants species in the park, as well as the millions of tourists who visit the park.

In addition, restoration of the Elwha is in keeping with the United States' trust responsibility to the Lower Elwha Klallam Tribe. The Tribe retains treaty-reserved fishing rights on the Elwha, and restoring the anadromous fish runs to the river would be consistent with protecting those rights.

It should also be noted that if power generation at the dams were to be discontinued as part of a restoration plan for the Elwha, it would have no significant impact on the power supply for the local Port Angeles community or the Northwest as a whole. The power supply for the region (WA, OR, ID, MT) is over 20,000 megawatts; the combined average output of the two dams is approximately 19 megawatts, or less than 1/1,000 of the total power on the Northwest grid. All the power generated by the two Elwha River dams is supplied to a single user – the Daishowa America mill in Port Angeles.

The Bonneville Power Administration (BPA), in its draft Resource Program, identified over 1,000 megawatts of cost effective conservation which is currently available and achievable in the Northwest. Seasonal power exchanges with other regions and fuel switching programs offer the Northwest significant additional opportunities for conservation not considered in BPA's Resource Plan. And there are substantial energy conservation opportunities directly within Daishowa's Port Angeles mill which have been identified by BPA in a 1991 energy audit. Thus the potential loss of 19 megawatts from the Elwha dams could easily be replaced by BPA through conservation acquisition and without impacting the region's power plan or creating a need for any new generating facilities.

This unique combination of factors – a federal commitment to restoring anadromous fish, the presence of the dam in a national park, the tribal treaty rights, and the availability of cost-effective replacement power – add up to a compelling case for Congress to act to restore the Elwha. Indeed, the federal government has *already* spent millions of dollars to undo the catastrophic environmental effects of these dams, including over three million dollars to correct the erosion of Ediz Hook caused by the projects, not to mention the time and resources numerous federal agencies involved in the FERC licensing proceeding have spent in the nearly 20 years which this controversy has remained unresolved.

There is a pressing need to act now to restore the salmon runs, rather than wait another decade or more for the administrative and legal proceedings to come to a final resolution. Indeed, while the war of words and paper drags on and on, the fish in the Elwha River move closer and closer to oblivion.

Because of this unique set of circumstances, we believe that resolution of this controversy through legislation is the most prudent course to take for the fishes' survival. Since 1989, the conservation community has advocated a negotiated solution to the Elwha River controversy. We have pressed for restoration of the Elwha both before FERC and in federal court, and we will continue to pursue all our legal options. But we firmly believe that it is Congress which is best situated to resolve this issue through comprehensive legislation which addresses the legitimate concerns of all parties.

It is in the best interests of the environment, Olympic National Park, the Tribe, the local community, and the nation as a whole that Congress resolve this ongoing controversy through timely legislation mandating restoration of the Elwha River ecosystem while protecting local jobs and the economy.

H.R. 4844, THE ELWHA RIVER ECOSYSTEM & FISHERIES RESTORATION ACT

We applaud the sponsors of H.R. 4844, led by Representative Swift, for recognizing the urgent nature of this issue and their leadership in bringing together all parties to craft a comprehensive solution. The conservation community strongly supports the intent and purposes of this bill. It represents the desire of our organizations and others to find a constructive solution to a long-running problem. Without such a solution, this issue is likely to remain mired in protracted litigation for years to come.

As the title of H.R. 4844 clearly indicates, the intent of this bill is restoration of the Elwha River ecosystem and its fisheries. Exhaustive study and research by federal, state, and tribal biologists have concluded that full restoration of the Elwha is *only* possible with removal of the two dams. *(see attachment 2)* The experts all agree, if the Elwha River truly is to be restored, the dams need to come down. We believe H.R. 4844 should reflect these findings.

In order to better accomplish the intent and purposes of this bill, the conservation community urges certain changes in H.R. 4844 to clarify and strengthen key provisions. Specifically, we recommend H.R. 4844 be amended as follows:

- Delete language in Sections 2, 3, and 4 which recognize a "right" to generate power at the projects. One of the principle issues in the FERC licensing proceeding and in our legal appeal before the court is the question of whether any such "right" exists. We acknowledge the companies' property rights in the project real estate; it is the assertion of a "right" to generate power currently contained in the bill which we believe is contrary to existing federal law and would create an unacceptable

precedent. It is our firm belief that this bill should be "legally neutral," and not establish any precedent for other project licensing proceedings.

- Include language in Section 8(a) which recognizes project removal as the primary alternative for analysis by the Task Force in preparing the Restoration Plan. The bill should reflect the conclusions of the numerous existing federal agency studies and reports on the Elwha dams which indicate that only removal of the projects can successfully restore wild salmon runs to the Elwha, that project removal is feasible, and that concerns regarding the local economy and water quality can be addressed under a project removal scenario. The Restoration Plan developed under this bill should be based on these facts and not go back to square one, re-inventing the wheel. Currently, the bill only calls for the Secretary to include removal of the Projects as one alternative for analysis in developing the Restoration Plan. We firmly believe the bill should direct the Secretary to pursue Project removal as the primary alternative for restoration unless the Task Force finds new information showing it to be infeasible.

- Include language in Section 8(c) to include as members of the Task Force two representatives of the conservation organizations which have intervened in the FERC proceeding for the projects. We have specific expertise and unique interests in the development of the restoration plan not represented by any of the current Task Force members. For over six years, both the local and national conservation organizations have played a central and valuable role in advocating for restoration of the Elwha River ecosystem; it is fully appropriate that we have a voice in the development of the Elwha restoration plan.

- Delete language in Section 12 which sets up a "double contingency" which would allow the state to hold up the entire Restoration Plan by refusing to enter into an instream flow agreement. Under Section 12, removal of the Projects is contingent upon the Secretary protecting the local water supply. Protection of the local water supply is contingent upon an agreement with the State to protect instream flows for the Elwha River. Thus the State would have the ability to "veto" removal of the projects by refusing to execute such an agreement. While we appreciate and support the intent of language to protect Elwha River instream flows necessary for fisheries restoration, the current language creates a much larger problem than it attempts to solve.

- Amend language in Section 12 to protect "*existing* water quality" instead of "*high* quality water." The current language is very subjective and difficult to quantify; our recommended new language is a more objective term which would provide a more definable measure of water quality.

It is the intent of the conservation organizations I represent here today to work with you and these committees, Mr. Chairman, as well as with all the members of the Washington state delegation, to pass a strong Elwha River restoration bill. There is an urgent need to act now; the fish in the Elwha can't afford to wait for several more years while protracted legal battles are fought out in the courts. We have an rare opportunity to rectify an ecological tragedy by restoring the fisheries and ecosystem of the Elwha River.

Important questions have been raised regarding the costs of this legislation, including who should pay for environmental mitigation measures and power replacement costs. Because of the unique set of circumstances present on the Elwha -- an existing federal commitment to restoring anadromous fish runs in the region, the presence of one of the dams in a national park, tribal treaty rights, the availability of cost effective replacement power, and significant on-going federal expenses attributable to the dams -- it is appropriate

that the federal government pay for environmental measures to restore the Elwha. Without this legislation, the federal government is still likely to incur major, on-going costs related to the Elwha *(FERC proceedings, litigation, erosion control on Ediz Hook, etc.)*

We do not in any way intend to suggest that as a general matter the costs of natural resource mitigation, restoration and enhancement attributable to FERC-licensed dams ought to be borne by the public. Quite the opposite, we believe that such measures must be included in the licensee's cost of doing business. In the case of the Elwha dams, however, we are confronted with a situation in which continuation of this controversy without resolution may ruin the very resource which the conservation group intervenors, the federal agencies, and the Tribe have spent so many years trying to restore.

It is important to point out that one reason we find ourselves in this situation with respect to the Elwha River is because of the lack of any provision of law or regulation that requires dam licensees to provide in advance for the costs of decommissioning or removing their project works at the end of the term of their licenses. Such a void in policy ignores the fact that hydroelectric projects will not necessarily remain profitable indefinitely. Dams and reservoirs, owing to the forces of time and sedimentation, are not inherently permanent features of the landscape. Moreover, there is no guarantee that project owners will seek new licenses for marginally profitable projects nor that project works will remain in satisfactory enough condition to warrant new licenses. Finally, we can expect other renewable energy sources less damaging to our natural resources to become cost competitive over the next 30 to 50 years that new licenses would operate.

Thus it would behoove Congress to urge the Commission to establish some method of guaranteeing that the costs of decommissioning and/or removing hydroelectric projects at the end of a license period is provided. Then, if FERC decides that such a course is the preferred alternative for a specific project, funds would be available. Such a provision could be made any number of ways: for instance, a trust fund created from a percentage of generating revenues over the term of a license for every dam could be established; or a pooled fund from the same source could be established, allowing for flexibility for application of the funds among projects where such a need arises; or FERC could require a bond covering the estimated amount of decommissioning/removal costs of the dam.

Regarding the Elwha River, however, it is sound public policy for Congress to pass legislation addressing the complex issues involved in the controversy presented here today. Neither FERC nor the courts have the flexibility or range of options available to them to adequately resolve this matter at this time. If we were to wait until a final licencing decision is reached (including legal appeals in the courts), Congress may still be faced with the need to resolve the same problems and questions which H.R. 4844 seeks to deal with today.

It is crucial to reiterate the urgent biological need to begin restoration of Elwha River salmon runs as soon as possible; the fish simply can't wait several more years. Without speedy action resolving this matter, full restoration of the Elwha River ecosystem and fisheries is unlikely.

In conclusion, Mr. Chairman, I would state that this legislation can provide a positive solution to an issue which is vital to the interests of the Northwest and the nation as a whole. I thank you for your interest in this matter and for the opportunity to present our views to you and the committees. I would be happy to provide any additional information you may require and to respond to any questions you may have.

ATTACHMENT 1

CONSERVATION ORGANIZATION INTERVENORS FOR THE ELWHA RIVER PROJECTS (FERC #588 AND #2683)

Intervened in 1986
- Friends of the Earth
- Olympic Park Associates
- Seattle Audubon Society
- Sierra Club

Intervened in 1990
- Trout Unlimited

Intervened in 1991
- American Rivers
- Friends of the Elwha
- Long Live the Kings
- Mountaineers
- National Parks and Conservation Association
- National Wildlife Federation
- Northwest Conservation Act Coalition
- Northwest Rivers Council
- Olympic Rivers Council
- Washington Wilderness Coalition

ATTACHMENT 2

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel, GCNW
7600 Sand Point Way N.E., BIN C15700
Seattle, Washington 98115
(206) 526-6075; FTS 392-6075

Restoration Prospects

Species	Without Dams	With Dams[1]
Steelhead		
Winter	Good	Fair[2]
Summer	Good	Fair[3]
Coho	Good	Fair[4]
Chinook		
Spring	Fair[5]	Poor/Unknown[6]
Summer/Fall	Good	Poor/Unknown[7]
Pink	Good	None[8]
Chum	Good	None[9]
Sockeye	Fair[10]	None[11]
Searun Cutthroat	Good	Unknown[12]
Dolly Vardan	Good	Unknown[13]
Shellfish	Good	Poor[14]

[1] Because habitat in the deltas, impoundments, and scour zones remains inaccessible; stream temperatures are elevated due to reservoir heating; nutrient transport is impaired; and cumulative stress causes additional mortality, it is not possible to achieve ecosystem restoration under the dam retention alternative.

[2] Prospects may be greater depending on the degree of reservoir related mortality imposed on downstream migrants. Late run winter steelhead may be "poor/unknown." The Tribe has additional reservations about the chances of passage restoration for steelhead.

[3] As with winter steelhead, prospects may be greater depending on the degree of reservoir-related mortality imposed on downstream migrants. Conversely, reservoir-related temperature increases in the lower river may adversely affect summer steelhead adults to a greater degree than winter steelhead adults.

[4] As with steelhead, prospects may be greater depending on the degree of reservoir-related mortality imposed on downstream migrants. The Tribe has additional reservations about the chances of passage restoration for coho.

[5] Constraining factors include broodstock availability and difficulties with artificial propagation.

[6] Poor to unknown prospects mainly because of potential adult passage losses and uncertainty over broodstock availability. Possible late outmigration timing, and resultant downstream passage problems in the reservoirs, add to restoration uncertainties. The Tribe has additional reservations about the chances of passage restoration for chinook.

[7] Poor to unknown prospects mainly because of late outmigration timing and possible problems with reservoir-related mortality. Potential adult passage losses and prespawning mortality also add to restoration uncertainties. Resolution of concerns about reservoir related mortality and adult passage would markedly improve restoration prospects. The Tribe has additional reservations about the chances of passage restoration for chinook.

[8] Reservoir-related losses of downstream migrants would likely preclude development of an upriver run.

[9] As with pink, reservoir related losses of downstream migrants would likely preclude development of an upriver run.

[10] Constraining factors include broodstock availability and difficulties with artificial propagation.

[11] Downstream and upstream passage problems, coupled with limited broodstock availability and difficulties with artificial propagation, are expected to preclude development of an upriver run.

[12] Little information exists regarding the response of this species to upstream and downstream passage facilities.

[13] As with searun cutthroat, little information exists regarding response to upstream and downstream passage facilities.

[14] Continued reduction of habitat is expected to severely limit restoration prospects.